

ELIAS C ALVORD (1942)  
ELLSWORTH C ALVORD (1964)

ROBERT W ALVORD\*  
CHARLES T KAPPLER  
JOHN H DOYLE\*  
RICHARD N BAGENSTOS  
JAMES C MARTIN, JR\*

\*ALSO ADMITTED IN NEW YORK  
\*ALSO ADMITTED IN MARYLAND

LAW OFFICES  
**ALVORD AND ALVORD**

200 WORLD CENTER BUILDING

918 SIXTEENTH STREET, N W

WASHINGTON, D.C.

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(202) 393-2266

16569

RECORDATION NO

FILED 1429

OF COUNSEL  
URBAN A LESTER

CABLE ADDRESS  
ALVORD

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367 A AND A

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OCT 12 1989 - 11 45 AM  
INTERSTATE COMMERCE COMMISSION

October 12, 1989

9-285A017

16569

RECORDATION NO

FILED 1429

OCT 12 1989 - 11 45 AM

INTERSTATE COMMERCE COMMISSION

Ms. Noretta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, DC 20423

Dear Ms. McGee:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11303(a) are two fully executed original copies of 1) a Security Agreement-Trust Deed dated October 12, 1989, a primary document, and 2) a Security Agreement Supplement No. 1 dated October 12, 1989, a secondary document.

The names and addresses of the parties to the enclosed documents are:

Secured Party: Fleet National Bank, as security trustee  
125 Dupont Drive  
Providence, RI 02907

Debtor: ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, MO 63045

A description of the railroad equipment covered by the enclosed documents is set forth in Schedule A attached hereto and made a part hereof.

Also enclosed is a check in the amount of \$30 payable to the order of the Interstate Commerce Commission covering the required recordation fee.


Kindly return stamped copy of each of the enclosed documents not needed for your files to Charles T. Kappler, Esq., Alvord and Alvord, 918 Sixteenth Street, NW, Washington, DC 20006.

Ms. Noreta R. McGee  
October 12, 1989  
Page 2

A short summary of the enclosed documents to appear in the Commission's Index is:

Security Agreement-Trust Deed dated October 12, 1989 between Fleet National Bank, as security trustee, Secured Party, and ACF Industries, Incorporated, Debtor, as supplemented by Security Agreement Supplement No. 1 dated October 12, 1989 covering 1080 railcars bearing ACFX marks and numbers.

Very truly yours,

  
Charles T. Kappler

CTK/skh  
Enclosures

SCHEDULE A

<u>CAR NUMBERS</u>	<u>AAR DESIG.</u>	<u>NO. OF CARS</u>
41877	C214	1
41878 - 41917	"	40
65378 - 65383	"	6
65401 - 65510	"	110
65601 - 65629	"	29
65651	"	136
65654		
65656		
65666		
65681		
65696		
65702		
65708 - 65814		
65829 - 65850		
66051 - 66090	"	258
66092 - 66093		
66095 - 66230		
66233 - 66236		
66238		
66241 - 66244		
66246 - 66253		
66256 - 66260		
66265 - 66268		
66273 - 66276		
66279 - 66280		
66282 - 66283		
66285 - 66292		
66297 - 66300		
66305 - 66308		
66313 - 66316		
66321 - 66324		
66329 - 66332		
66368 - 66371		
66376		
66392		
66401 - 66403		
66405 - 66406		
66408 - 66410		
66413 - 66415		
66418		

<u>CAR NUMBERS</u>	<u>AAR DESIG.</u>	<u>NO. OF CARS</u>
66701 - 66704 66708 66793 - 66796 66803 - 66808 66823 - 66825 66827 66829	C214	20
66025 - 66026 66028 66035 66039 66041 66047	C414	7
65630 - 63647	C514	18
45102	C614	1
45035 45038 45040 45042 - 45052	"	14
45053	"	1
51859 - 51861 51871 51873 - 51875 51877 51879 - 51906	"	36
51907 - 51908	"	2
51921 - 51931	"	11
51932	"	1
51933	"	1
51934 - 51938	"	5
51939 - 51958	"	20
51959 - 51978	"	20
65384 - 65393	"	10
73150 - 73233	T054	84

<u>CAR NUMBERS</u>	<u>AAR DESIG.</u>	<u>NO. OF CARS</u>
72901 - 72970	T104	70
72971 - 73008	"	47
73011 - 73012		
73014 - 73020		
73079 - 73098	"	20
72819 - 72832	T105	14
72900	"	1
73125 - 73126	"	2
72818	T106	1
73034 - 73055	"	31
73057 - 73065		
72858 - 72862	T107	5
73236 - 73237	"	5
73240		
73243		
73244		
72701 - 72702	T108	23
72704 - 72705		
72707 - 72709		
72711		
72713 - 72716		
72719 - 72725		
72727 - 72730		
73135 - 73139	"	12
73142 - 73148		
73537 - 73542	T426	6
73545 - 73547	T564	3
77486 - 77490	"	5
77471 - 77474	T863	<u>4</u>
		<u><u>1,080</u></u>

**Interstate Commerce Commission**  
Washington, D.C. 20423

10/11/89

OFFICE OF THE SECRETARY

Charles T. Kappler  
Alvord & Alvord  
918 16th St. N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 10/12/89 at 11:45am and assigned recordation number(s). 16569 & 16569-A

Sincerely yours,



Noreta R. McGee  
Secretary

Enclosure(s)

ELIAS C. ALVORD (1942)  
ELLSWORTH C. ALVORD (1964)

ROBERT W. ALVORD\*  
CHARLES T. KAPPLER  
JOHN H. DOYLE\*  
JAMES C. MARTIN, JR.\*

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20006-2973  
(202) 393-2266

OF COUNSEL  
URBAN A. LESTER

TELEX  
440367 A AND A

TELEFAX  
(202) 393 2156

July 12, 1990

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

RECORDATION NO. \_\_\_\_\_ FILED 1425

AUG 12 1990 - 10 10 AM

INTERSTATE COMMERCE COMMISSION

Dear Ms. McGee:

Reference is made to the Security Agreement-Trust Deed dated October 12, 1989 between ACF Industries, Incorporated and Fleet National Bank, as security trustee, and the Security Agreement Supplement No. 1 dated October 12, 1989 ("Security Agreement Supplement") which were duly filed and recorded on October 12, 1989 under Recordation Numbers 16569 and 16569-A, respectively.

A review of Page 2 of Schedule I to the Security Agreement Supplement has disclosed that due to a scrivener's error railcar number 45012 was listed as 45102.

Kindly enter this letter in the Commission's file folder containing Recordation Numbers 16569 and 16569-A, as evidence that railcar 45012 is covered and railcar 45102 is not covered by the documents therein.

Very truly yours,

  
Charles T. Kappler

CTK/bg

cc: Mr. Neb Sterdjevich, Vice President  
Creditanstalt - Bankverein  
245 Park Avenue  
New York, New York 10167

Mr. Umesh Choski  
ACF Industries Incorporated  
3301 Rider Trail South  
Earth City, Missouri 63045

Ms. Connie M. Fallon, Trust Officer  
Fleet National Bank  
125 Dupont Drive  
Providence, Rhode Island 02907

ELIAS C ALVORD (1942)  
ELLSWORTH C ALVORD (1964)

ROBERT W ALVORD\*  
CHARLES T KAPPLER  
JOHN H DOYLE\*  
RICHARD N BAGENSTOS  
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RECORDATION NO. \_\_\_\_\_ FILED 1429

JUN 5 1990 -12 15 PM

INTERSTATE COMMERCE COMMISSION

June 5, 1990

RECORDATION NO. \_\_\_\_\_ FILED 1429

JUN 5 1990 -12 15 PM

INTERSTATE COMMERCE COMMISSION

Ms. Noreta R. McGee  
Secretary  
Interstate Commerce Commission  
Washington, D.C. 20423

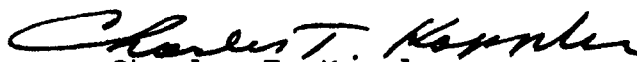
Dear Ms. McGee:

Reference is made to the Security Agreement-Trust Deed dated October 12, 1989 between ACF Industries, Incorporated and Fleet National Bank, as security trustee, and the Security Agreement Supplement No. 1 dated October 12, 1989 ("Security Agreement Supplement") which were duly filed and recorded on October 12, 1989 under Recordation Numbers 16569 and 16569-A, respectively.

A review of Page 2 of Schedule I to the Security Agreement Supplement has disclosed that due to a scrivener's error eighteen (18) AAR Designation C 514 railcars were listed as bearing 65630 - 63647. The correct listing is 65630 - 65647.

Kindly enter this letter in the Commission's file folder containing Recordation Numbers 16569 and 16569-A.

Very truly yours,

  
Charles T. Kappler

CTK/bg

c: Mr. Neb Sterdjovich  
Vice President  
Creditanstalt - Bankverein  
245 Park Avenue  
New York, New York 10167

Mr. Umesh Choksi  
ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, Missouri 63045



16569  
RECORDATION NO. \_\_\_\_\_ FILED 1488

OCT 12 1989 -11 45 AM

INTERSTATE COMMERCE COMMISSION

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SECURITY AGREEMENT - TRUST DEED

BETWEEN

ACF INDUSTRIES, INCORPORATED

DEBTOR

AND

FLEET NATIONAL BANK

SECURED PARTY

Dated October 12, 1989

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## TABLE OF CONTENTS

Parties .....	1
Recitals .....	1
1. SECURITY .....	1
1.1. Grant of Security .....	1
2. COVENANTS AND WARRANTIES OF THE DEBTOR .....	3
2.1. Debtor's Duties .....	3
2.2. Maintenance; Insurance .....	3
2.3. Warranty of Title .....	4
2.4. Further Assurances .....	5
2.5. Recordation and Filing .....	5
2.6. Power of Attorney .....	5
2.7. Maintenance of Existence .....	5
2.8. Restrictions on Mergers, Consolidations and Sales of Assets .....	5
2.9. Inspections and Reports .....	5
2.10. Subordination of Leases .....	6
2.11. Chief Executive Office; Corporate Name Records .....	6
2.12. Lease of Equipment .....	6
3. SPECIAL PROVISIONS CONCERNING LEASES .....	6
3.1. Debtor's Rights Under Assigned Leases .....	6
3.2. Interest of Secured Party .....	7
3.3. Possession of Assigned Leases .....	7
4. POSSESSION AND USE OF EQUIPMENT .....	7
4.1. Possession of Collateral .....	7
4.2. Insurance Proceeds .....	7
4.3. Substitution of Equipment .....	9
5. SECURED PARTY'S RIGHTS .....	9
5.1. The Secured Party's Rights .....	9
5.2. Effect of Sale .....	11
5.3. Application of Sale Proceeds .....	11
5.4. Discontinuance of Remedies .....	11
5.5. Cumulative Remedies .....	11
5.6. Indemnity .....	12

6.	THE SECURED PARTY .....	12
6.1.	Certain Duties and Responsibilities of Secured Party .....	12
6.2.	Certain Limitations on Secured Party's Rights to Compensation and Indemnification .....	13
6.3.	Certain Rights of Secured Party .....	14
6.4.	Showings Deemed Necessary by Secured Party .....	15
6.5.	Status of Moneys Received .....	15
6.6.	Resignation of Secured Party .....	16
6.7.	Removal of Secured Party .....	16
6.8.	Successor Secured Party .....	16
6.9.	Appointment of Successor Secured Party .....	16
6.10.	Merger or Consolidation of Secured Party .....	16
6.11.	Conveyance Upon Request of Successor Secured Party .....	17
6.12.	Acceptance of Appointment by Successor Secured Party .....	17
7.	MISCELLANEOUS .....	17
7.1.	Successors and Assigns .....	17
7.2.	Partial Invalidity .....	17
7.3.	Communications .....	17
7.4.	Release .....	18
7.5.	Governing Law .....	18
7.6.	Counterparts .....	18
7.7.	Headings .....	18
7.8.	Confidentiality .....	19
8.	DEFINITIONS .....	19
	Signature Page .....	22

**ATTACHMENT TO SECURITY AGREEMENT-TRUST DEED --**

**Exhibit A - Form of Security Agreement Supplement**

## SECURITY AGREEMENT - TRUST DEED

SECURITY AGREEMENT-TRUST DEED dated October 12, 1989 (the "Security Agreement") between ACF Industries, Incorporated, a New Jersey corporation (the "Debtor"), and Fleet National Bank, a national banking association, as security trustee (the "Secured Party").

### RECITALS

A. The Debtor has entered into a Loan Agreement dated October 12, 1989 (the "Loan Agreement") with Creditanstalt-Bankverein, as agent, and the Banks listed on the signature pages thereof and each Person who becomes a party thereto pursuant to an Assignment and Acceptance in accordance with Section 7.07(b) thereof (individually "Lender" and collectively "Lenders"), providing for the commitment of the Lenders to make loans to the Debtor which may be availed of by the Debtor in its discretion from time to time during the period from the date hereof to and including October 12, 1990 in an aggregate amount not to exceed at any time fifty million dollars (\$50,000,000) (the "Maximum Total Credit"), which loans will be evidenced by the Notes (the "Notes") of the Debtor substantially in the form attached as Exhibit A to the Loan Agreement.

B. Words and phrases not otherwise defined herein shall have the meanings assigned thereto in the Loan Agreement.

C. The principal of and interest on the Loans and all additional amounts and other sums at any time due and owing from or required to be paid by the Debtor, howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, now or hereinafter existing or due to become due under or in connection with the Loans, the Notes, the Loan Agreement or this Security Agreement, including without limitation interest rate protection or exchange agreements provided or entered into by the Agent, any Lender or any other Person with respect to the Loans (but excluding any such additional amounts or other sums representing any loss, costs, or expense arising as a result of the default by any Lender or other Person which is a swap counterparty under any such interest rate protection or exchange agreement in the performance of its obligations thereunder which default is not the result of a default by the Debtor with respect to the Loan or Loans to which such agreement relates), are hereinafter sometimes referred to as "Indebtedness Hereby Secured."

D. All requirements of law relating to the transactions contemplated hereby have been fully complied with and all other acts and things necessary to make this Security Agreement a valid, binding and legal instrument for the security of the Notes have been done or performed.

### SECTION 1. SECURITY.

1.1. **Grant of Security.** The Debtor, in consideration of the premises and of the sum of Ten Dollars received by the Debtor from the Secured Party and the Lenders and other good and valuable consideration, receipt and sufficiency whereof is hereby acknowledged, and in order to secure the payment of the principal of and interest on the Notes according to their tenor and effect, and to secure the payment of all other

Indebtedness Hereby Secured and the performance and observance of all covenants and conditions binding the Debtor contained in the Loan Agreement, in this Security Agreement or in any of the Assigned Leases, does hereby transfer, convey, warrant, mortgage, deliver, pledge, assign, and grant to the Secured Party, its successors and assigns, a Lien on and continuing security interest in, all and singular of the Debtor's rights, title and interest in and to the properties, rights, interests and privileges described in clauses (i), (ii), and (iii) hereof (all of which properties and rights hereby granted, bargained, sold, transferred, conveyed, warranted, mortgaged, assigned, pledged, hypothecated or intended so to be are hereinafter collectively referred to as the "Collateral"):

(i) Those certain railroad tank cars and covered hopper cars (collectively the "Equipment" or "Items of Equipment" and individually an "Item of Equipment") from time to time described in Security Agreement Supplements substantially in the form of Exhibit A attached hereto and made a part hereof (individually "Security Agreement Supplement" and collectively "Security Agreement Supplements"), together with all accessories, equipment, parts and appurtenances appertaining or attached to such Equipment, whether now owned or hereafter acquired, and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to any and all of said Equipment, together with all the rents, issues, income, profits and avails therefrom and the proceeds thereof.

(ii) Each and every lease from time to time relating to the Equipment but to and only to the extent relating to the Equipment (each such lease being an "Assigned Lease" and each such right, title or interest with respect thereto being an "Assigned Lease Right"), including but not limited to:

(a) all rents, issues, income, profits, avails and other payments due and to become due under any Assigned Lease, whether as contractual obligations, damages or otherwise, in respect of, but only in respect of, the Equipment;

(b) all of its claims, rights, powers or privileges and remedies under any Assigned Lease insofar as such rights relate to the Equipment and, to the extent permitted by the lessee under any Assigned Lease, the right to cure a default by Debtor under any Assigned Lease;

(c) the right to hold the signed copies of the Assigned Leases; and

(d) all of its rights under any Assigned Lease to make determinations, to exercise any election (including, but not limited to, election of remedies) or option or to give, grant or receive any notice, consent, waiver or approval, together with full power and authority with respect to any Assigned Lease to demand, receive, enforce, collect or receipt for any of the foregoing rights or any property which is the subject of any Assigned Lease, to enforce or execute any checks, or other instruments or orders, to file any claims and to take any action which (in the opinion of the Secured Party) may be necessary or

advisable in connection with any of the foregoing insofar, but only insofar, as such rights relate to the Equipment, together with all extensions, renewals and replacements thereof, whether now owned or hereafter acquired and all income, profits and avails therefrom, all rights thereunder and all proceeds thereof (insofar as the same relate to or are derived from the Equipment) and

SUBJECT ALWAYS to the limitations contained in Section 3.

(iii) The Cash Collateral Account, as defined in Section 4.2, all amounts from time to time on deposit therein and all investments made with the proceeds thereof.

TO HAVE AND TO HOLD the Collateral unto the Secured Party, its successors in trust and assigns, forever, upon the terms herein set forth, for the benefit of the Secured Party and for the equal and proportionate benefit, security and protection of all present and future holders of the Notes outstanding under the Loan Agreement and hereunder from and after the execution and delivery of the Loan Agreement by the parties thereto, without preference, priority or distinction of any Notes over any other Notes by reason of priority at the time of issue, date of maturity thereof or otherwise for any cause whatsoever.

## **SECTION 2. COVENANTS AND WARRANTIES OF THE DEBTOR.**

So long as the Notes or any obligation contemplated by the Loan Agreement or this Security Agreement shall remain unpaid or the Lenders shall have any Commitment under the Loan Agreement, the Debtor covenants, warrants and agrees as follows:

**2.1. Debtor's Duties.** The Debtor covenants and agrees well and truly to perform, abide by and to be governed and restricted by each and all of the terms, provisions, restrictions, covenants and agreements set forth in this Security Agreement or in any of the other Loan Documents and in each and every supplement hereto or thereto or amendment thereof or hereof which may at any time or from time to time to be executed and delivered by the parties thereto or their successors and assigns, to the same extent as though each and all said terms, provisions, restrictions, covenants, amendments or supplements were fully set out in an amendment or supplement to this Security Agreement.

**2.2. Maintenance; Insurance.** (a) The Debtor at its own expense will maintain and keep or cause to be maintained and kept each Item of Equipment in good order and repair and eligible for railroad interchange in accordance with the Interchange Rules of the Association of American Railroads or any other interchange rules with which it may be required to comply and in full compliance with any applicable laws, rules, regulations or standards which may be promulgated by the Department of Transportation, the Federal Railroad Administration, the Interstate Commerce Commission or other applicable regulatory body (including, without limitation, any Canadian regulatory body) or any successor agency or party thereto and any insurance company insuring such Item, at its own cost and expense, unless and until it becomes worn out, unsuitable for use, lost or destroyed.

(b) The Debtor will maintain or cause to be maintained with responsible insurance companies, such insurance on such of its properties and against liability exposure, in such amounts and against such risks as is customarily maintained by businesses which are engaged in activities and of a size similar to the Debtor, and in any event, in an amount not less than the full fair insurable value of all of the assets and properties of the Debtor and its Subsidiaries where insurance is customarily maintained by the Debtor. For the purpose of this Section 2.2(b), insurance may include self-insurance to the extent customarily maintained by businesses which are engaged in activities and of a size similar to the Debtor, provided the Debtor maintains or causes to be maintained adequate reserves if required by generally accepted accounting principles to cover the risks not otherwise insured and that risks uninsured except by self-insurance shall in no event exceed \$10,000,000 in the aggregate for property and liability coverage. Within 30 days of the end of each fiscal quarter of the Debtor, the Debtor shall furnish to the Secured Party a certificate of the President, Chief Financial Officer or Treasurer of the Debtor evidencing the maintenance of the insurance.

**2.3. Warranty of Title.** The Debtor has the right, power and authority to grant a valid first and prior perfected Lien on and security interest in the Collateral to the Secured Party for the uses and purposes herein set forth; no Lien currently attaches to the Collateral and the Debtor will warrant and defend the title to the Collateral against all claims and demands of all third Persons or Persons claiming by, through, under or on account of the Debtor. The Debtor will not create, assume or suffer to exist any Lien on the Collateral other than Permitted Liens and shall promptly take such action as is reasonably necessary to remove any Lien that is not a Permitted Lien. As used herein, "Lien" shall mean any mortgage, pledge, security interest, encumbrance, lease, lien or charge of any kind (including any agreement to give any of the foregoing, any conditional sale or other title retention agreement and the filing of or agreement to give any financing statement under the Interstate Commerce Act ("ICA") or the Uniform Commercial Code ("UCC") of any jurisdiction. As used herein, "Permitted Liens" shall mean (a) the Lien created by this Security Agreement and the Assigned Leases; (b) the Lien of taxes, assessments or governmental charges or levies which are not at the time delinquent; (c) the Lien of taxes (including without limitation ERISA liens), assessments or governmental charges or levies which are delinquent but the validity of which is being contested in good faith by appropriate proceedings diligently pursued (if the Debtor shall have set aside on its books such reserves as deemed by it appropriate and adequate in accordance with generally accepted accounting principles), provided that such proceedings shall suspend the collection of such taxes, assessments or governmental charges and the security interest in the Collateral, or any part thereof, would not in the opinion of the Secured Party be adversely affected or forfeited during the period of such contest; (d) Liens imposed by law; (e) Liens (including deposits) in connection with self-insurance; (f) Liens in connection with litigation being contested and judgment Liens in proceedings which are being (or which will be) duly appealed and for which stay of execution has been (or is reasonably expected to be) received; (g) Liens arising in connection with advances or progress payments under government contracts; and (h) mechanics', materialmen's, suppliers', warehousemen's and similar Liens for services or materials for which payment is not overdue or the payment of which is being contested in good faith by appropriate proceedings diligently pursued (if the Debtor shall have set aside on its books such reserves as deemed by it appropriate and adequate in accordance with generally accepted accounting principles), provided that such proceedings shall suspend the enforcement of any such Lien and the security interest in the Collateral, or any part thereof, would not in the opinion of the Secured Party be adversely affected or forfeited during the period of such contest.

**2.4. Further Assurances.** The Debtor will, at its expense, do, execute, acknowledge and deliver all and every further acts, deeds, conveyances, transfers and assurances necessary or proper for the perfection of the security interest being herein provided for in the Collateral, whether now owned or hereafter acquired.

**2.5. Recordation and Filing.** The Debtor will cause this Security Agreement and each and every Security Agreement Supplement, and all financing and continuation statements and similar notices required by applicable law, at all times to be kept, recorded and filed at no expense to the Secured Party with the ICC, the Registrar General of Canada and the appropriate recordation offices under the UCC in order fully to preserve and protect the rights of the Secured Party hereunder, and will at its own expense furnish to the Secured Party promptly after the execution and delivery of this Security Agreement and of each and every Security Agreement Supplement opinions of Alvord & Alvord and special Canadian counsel reasonably acceptable to the Secured Party and stating that in the opinion of such counsel this Security Agreement or such Security Agreement Supplement, as the case may be, has been properly recorded or filed for record as to make effective of record the first and prior perfected Lien and security interest intended to be created hereby.

**2.6. Power of Attorney.** The Debtor does hereby irrevocably constitute and appoint the Secured Party its true and lawful attorney with full power of substitution for it and in its name, place and stead, to, upon the occurrence and during the continuance of an Event of Default hereunder, ask, demand, collect, receive, receipt for, sue for, compound and give acquittance for any and all rents, income and other sums which are assigned under Section 1.1 hereof with full power to settle, adjust or compromise any claim thereunder as fully as the Debtor could itself do, and to endorse the name of the Debtor on all commercial paper given in payment or in part payment thereof, and in its discretion to file any claim or take any other action or proceedings, either in its own name or in the name of the Debtor or otherwise, which the Secured Party may deem necessary or appropriate to protect and preserve the right, title and interest of the Secured Party in and to such rents, income and other sums and the security intended to be afforded hereby.

**2.7. Maintenance of Existence.** The Debtor will preserve and keep in full force and effect its existence, rights and franchises and all licenses and permits necessary to the performance of its obligations hereunder.

**2.8. Restrictions on Mergers, Consolidations and Sales of Assets.** The Debtor will not sell, transfer or otherwise dispose of all or substantially all of its property or assets to any Person unless such Person agrees in writing to assume its obligations under and be bound by the provisions of this Security Agreement and the other Loan Documents and, after giving effect to such sale, transfer or other disposition, no Event of Default would exist.

**2.9. Inspections and Reports.** (a) The Debtor will permit any representatives of the Secured Party, the Agent or any Lender, at such party's expense, to inspect the Assigned Leases. If an Event of Default hereunder shall have occurred and be continuing, the Secured Party, the Agent and each Lender and their respective designated representatives shall have the right to inspect the books and records of the Debtor pertaining to the Equipment and the Assigned Leases.



(b) The Debtor will transmit to the Secured Party, the Agent and each Lender:

(i) As soon as practicable, and in any event within 55 days after the end of each fiscal quarter of the Debtor, a certificate of the President, Chief Financial Officer or Treasurer of the Debtor identifying any Item of Equipment which has not as of the date of such certificate been under lease to a lessee under an Assigned Lease for a period of 6 months or more and certifying that at least 80% of the Items of Equipment are then being leased to lessees under Assigned Leases or if such is not the case, so stating and setting forth what action the Debtor is taking or proposes to take to cause at least 80% of the Items of Equipment to be leased pursuant to Assigned Leases; and

(iii) immediately upon becoming aware that less than 80% of the Items of Equipment are not being leased pursuant to Assigned leases, a written notice to the Secured Party, the Agent and each of the Lenders setting forth such fact and what action the Debtor is taking or proposes to take to cause at least 80% of the Items of Equipment to be leased pursuant to Assigned Leases.

**2.10. Subordination of Leases.** Any leasehold estate with respect to any Equipment shall be subordinate and junior to the Lien on such Equipment granted by this Security Agreement and all leases with respect to any Equipment shall contain a provision to that effect substantially in the form appearing in the Assigned Leases in effect on the date hereof.

**2.11. Chief Executive Office; Corporate Name Records.** The chief executive office of Debtor is located at 3301 Rider Trail South, Earth City, Missouri 63045.

**2.12. Lease of Equipment.** (a) The Debtor will at all times keep and maintain not less than 80% of the Items of Equipment, including without limitation Items of Equipment subjected to the Lien of this Security Agreement pursuant to Section 4 hereof, subject to and leased under Assigned Leases.

(b) The Debtor will, prior to entering into any Assigned Lease the primary term of which expires prior to the Maturity Date, obtain the written approval of the Agent (which it may give or withhold in its sole and absolute discretion) of the acceptability of the lessee which is to be a party to such Assigned Lease.

### **SECTION 3. SPECIAL PROVISIONS CONCERNING LEASES.**

**3.1. Debtor's Rights Under Assigned Leases.** Until the occurrence and continuance of an Event of Default, the Debtor may exercise all of the Debtor's rights, powers, privileges and remedies under the Assigned Leases, including without limitation, the right to receive any and all monies due or to become due under the Assigned Leases, and to retain all copies (original or duplicates) of Assigned Leases, provided that without the prior written consent of the Secured Party, the Debtor will not enter into any amendment, modification, waiver or termination of any provision of the Assigned Leases other than those which do not have a material adverse effect on the value of such

Assigned Leases or the interest of the Secured Party and the Lenders therein (it being understood and agreed that any such amendment, modification, waiver or termination which would have the effect of reducing the present value of the rental payments under any of the Assigned Leases shall be deemed to have a material adverse effect on the interest of the Secured Party and the Lenders therein.)

**3.2. Interest of Secured Party.** The Debtor covenants and agrees to warrant and defend the right, title and interest of the Secured Party granted and assigned hereby with respect to the Assigned Leases against the claims and demands of any Person and upon the occurrence and during the continuance of an Event of Default hereby grants the Secured Party full power and authority to take all actions as the Secured Party deems necessary to obtain the benefits of such grant and assignment with respect to the Assigned Leases, including, without limitation, to make all claims, take all actions and obtain all payments with respect thereto.

**3.3. Possession of Assigned Leases.** So long as no Event of Default shall have occurred and be continuing, the Debtor shall be entitled to retain possession of the signed copies of the Assigned Leases. In the event that an Event of Default shall have occurred and be continuing, the Debtor shall immediately upon the request of the Secured Party deliver either (a) the signed copy of each Assigned Lease which has been designated as an original for purposes of the UCC or (b) if a signed copy of such Assigned Lease has not been designated as an original for purpose of the Uniform Commercial Code, all the signed copies of such Assigned Lease (other than the signed copy of each Assigned Lease held by the lessee thereunder) to the Secured Party; provided that if any unit or units of Rolling Stock is or are leased under any Assigned Lease which unit or units is or are not an Item of Equipment subject to the Lien of this Security Agreement, the delivery of such Assigned Lease or Assigned Leases, as the case may be, shall be to a commercial bank or trust company acting at the direction of and as a fiduciary for and on behalf of the Secured Party and each other financial institution having a security interest in any such unit or units of Rolling Stock.

#### **SECTION 4. POSSESSION AND USE OF EQUIPMENT.**

**4.1. Possession of Collateral.** So long as there is no Event of Default hereunder, the Debtor and lessee under an Assigned Lease shall be suffered and permitted to remain in full possession, enjoyment and control of the Collateral, including each Assigned Lease, and to manage, operate and use the Equipment and each part thereof with the rights and franchises appertaining thereto; provided that the Debtor or its lessees shall use the Equipment only within the continental United States and Canada.

**4.2. Insurance Proceeds.** (a) In the event that any Item of Equipment is destroyed, lost, stolen, irreparably damaged or missing for a period in excess of sixty (60) days, taken by any governmental entity (including without limitation condemnation, confiscation, requisition, taking of title or use by any governmental entity) or otherwise becomes unusable in the business of the Debtor (a "Casualty Loss") then within thirty (30) days from such Casualty Loss, at the option of the Debtor, either (i) the Debtor shall replace such Item of Equipment with a replacement unit of Rolling Stock of like model and of equal or greater value, utility and useful life and any proceeds payable to the Debtor or to the Secured Party as a result of each such Casualty Loss whether in respect of insurance proceeds, condemnation awards or otherwise (collectively, "Casualty Loss Proceeds") shall, so long as no Default or Event of Default shall have occurred and be

continuing, be retained by or paid to the Debtor as reimbursement for the costs of such replacement or (ii) the Debtor shall pay or cause to be paid to the Secured Party a sum equal to the amount by which the Casualty Value of the Item of Equipment suffering such Casualty Loss exceeds the amount of the Casualty Loss Proceeds received by the Secured Party and the Secured Party shall retain, and hold as additional Collateral hereunder in accordance with the clauses (A), (B), (C) and (D) below the amount of such excess and any Casualty Loss Proceeds (except to the extent that the aggregate amount of such Casualty Loss Proceeds does not exceed \$275,000, which amount may be retained by Debtor):

(A) To the extent that the Debtor shall receive any Casualty Loss Proceeds, such proceeds shall be held in trust for the benefit of the Secured Party and shall be promptly turned over to the Secured Party in the exact form received (except for any necessary endorsements) to be held by the Secured Party as Collateral as aforesaid.

(B) All such Casualty Loss Proceeds shall be deposited by the Secured Party into a special cash collateral account (the "Cash Collateral Account") with the Secured Party at 125 Dupont Drive, Providence, Rhode Island 02907, in the name of and under the sole control and dominion of the Secured Party.

(C) All amounts from time to time on deposit in the Cash Collateral Account shall, so long as no Default or Event of Default shall have occurred and be continuing, be invested by the Secured Party at the direction of Debtor in certificates of deposit of investment grade with such maturities as Debtor shall request.

(D) Except as otherwise provided herein, amounts on deposit in the Cash Collateral Account shall not be released by the Secured Party except to the extent that all or any part of such amount is to be applied, at the option of Debtor, to prepay, or satisfy, in whole or in part, any scheduled amortization of the Secured Loan.

In the event that an Item of Equipment has been the subject of a Casualty Loss and the Debtor in consequence thereof has elected to satisfy the requirements of subsection (a)(ii) of this Section 4.2, the Debtor, at its sole expense, may at any time thereafter substitute a replacement unit of Rolling Stock as provided in subsection (a)(i) of this Section 4.2 and withdraw the monies on deposit with the Secured Party relating to the Item of Equipment which had been the subject of a Casualty Loss and in respect of which the Debtor had satisfied the requirements of subsection (a)(ii) of this Section 4.2, provided, however, that concurrently with the withdrawal of any such monies, there shall be subjected to the Lien of this Security Agreement and the interest of the Secured Party other Equipment of an equal or greater value, utility and useful life as that of any Item or Items of Equipment to be so released, the value, utility and useful life of which as of the date of such substitution shall be certified to by an authorized officer of the Debtor.

Upon substitution of any replacement unit of Rolling Stock, such replacement unit shall become and be subject to the terms and conditions of this Security Agreement, including without limitation Section 2.12 hereof.

(b) Upon the occurrence and during the continuance of any Event of Default, all Casualty Loss Proceeds, including any portion of the Cash Collateral Account deemed appropriate by the Secured Party, shall be paid or released to the Secured Party and applied by the Secured Party as specified in Section 5.3.

**4.3. Substitution of Equipment.** So long as no Default or Event of Default shall have occurred and be continuing, upon the request of the Debtor, the Secured Party shall execute and deliver releases in a form reasonably satisfactory to the Debtor releasing (i) all the Secured Party's interest in and to any Item of Equipment, and (ii) such Item of Equipment from the Lien of this Agreement, provided, however, that no Item of Equipment shall be so released unless simultaneously there shall, at the sole expense of the Debtor, be subjected to the Lien of this Security Agreement and the interest of the Secured Party other Equipment of an equal or greater value, utility and useful life as that of any Item or Items of Equipment to be so released, the value, utility and useful life of which as of the date of such release shall be certified to by an authorized officer of the Debtor. The foregoing shall not be deemed in any way to limit the Debtor's right to purchase or substitute any replacement Items of Equipment in the event of a Casualty Loss or Casualty Losses pursuant to Section 4.2.

Any unit or units of Rolling Stock to be subjected to the Lien of this Security Agreement pursuant to this Section 4.3 shall, immediately upon being so subjected, then and thereupon be subject to the terms and conditions of this Security Agreement, including without limitation Section 2.12 hereof.

## **SECTION 5. SECURED PARTY'S RIGHTS.**

**5.1. The Secured Party's Rights.** The Debtor acknowledges and agrees that each and all of the terms and provisions of Article V of the Loan Agreement have been and are incorporated in this Security Agreement by reference to the same extent as though fully set out herein and that the term Event of Default wherever used in this Security Agreement shall mean either: (A) an Event of Default as defined in Article V of the Loan Agreement, or (B) the failure of the Debtor to comply with any covenant, agreement or warranty contained in this Security Agreement within 30 days after the Secured Party, the Agent or any Lender shall have given written notice thereof to the Debtor (it being understood that such 30-day grace period shall apply only to any such failure of the Debtor to comply with any covenant, agreement or warranty hereunder). The Debtor further agrees that when any Event of Default has occurred and is continuing, the Secured Party shall have the rights, options, duties and remedies of a secured party, and the Debtor shall have the rights and duties of a debtor, under the ICA and under the UCC of the State of New York (regardless of whether such UCC or law similar thereto has been enacted in a jurisdiction wherein the rights or remedies are asserted), as applicable, and the Secured Party shall have the following additional rights and remedies:

(a) The Secured Party shall have all the rights of a secured party under the ICA or the UCC to enforce the assignments and security interests contained herein and in addition shall have the right (i) to enforce all remedies, rights, powers, and privileges of the Debtor under any or all of the Assigned Leases insofar as such remedies, rights, powers and privileges relate to the Equipment, and/or (ii) to substitute itself or any nominee or agent in lieu of the Debtor as party to any of the Assigned Leases and to notify any lessee of any Assigned Lease Rights (the Debtor hereby agreeing to deliver any such notice at the request of the Secured Party or any Lender) that all payments and

performance under the Assigned Leases shall be made or rendered to the Secured Party or such other Person as it may designate.

(b) The Secured Party personally or by agents or attorneys, shall have the right (subject to Section 3.3 hereof and to compliance with any applicable mandatory legal requirements) to take immediate possession of the Collateral, or any portion thereof, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the Debtor, with or without notice, demand, process of law or legal procedure, if this can be done without breach of the peace, and search for, take possession, remove, keep and store the Collateral, or use and operate or lease the Collateral until sold.

(c) Any Collateral repossessed by the Secured Party under or pursuant to this Section 5.1 may be sold, leased or otherwise disposed of under one or more contracts or as an entirety, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner, at such time or times, at such place or places and on such terms as the Secured Party may, in compliance with any mandatory requirements of applicable law, determine to be commercially reasonable. Any of the Collateral may be sold, leased or otherwise disposed of, in the condition in which the same existed when taken by the Secured Party or after any overhaul or repair which the Secured Party shall determine to be commercially reasonable. Any such disposition which shall be a private sale or other private proceedings permitted by such requirements shall be made upon not less than 10 days' written notice to the Debtor specifying the times at which such disposition is to be made and the intended sale price or other consideration therefor, and shall be subject, for 10 days after the giving of such notice, to the right of the Debtor or any nominee of the Debtor to acquire the Collateral involved at a price or for such other consideration so specified. Any such disposition which shall be a public sale permitted by such requirements shall be made upon not less than 10 days' written notice to the Debtor specifying the time and place of such sale and, in the absence of applicable requirements of law, shall be by public auction (which may, at the Secured Party's option, be subject to reserve) after publication of notice of such auction not less than 10 days prior thereto in two newspapers in general circulation in the City of New York. To the extent permitted by any such requirement of law, the Secured Party may itself bid for and become the purchaser of the Collateral or any item thereof, offered for sale in accordance with this Section without accountability to the Debtor (except to the extent of surplus money received as provided in Section 5.3). In the payment of the purchase price thereof, the Secured Party shall be entitled to have credit on account of the purchase price thereof of amounts owing to the Secured Party on account of the Indebtedness Hereby Secured and the Secured Party may deliver the claims for interest on or principal of the Notes or other Indebtedness Hereby Secured in lieu of cash up to the amount which would, upon distribution of the net proceeds of such sale, be payable thereon. If, under mandatory requirements of applicable law, the Secured Party shall be required to make disposition of the Collateral within a period of time which does not permit the giving of notice to the Debtor as hereinabove specified, the Secured Party need give the Debtor only such notice of disposition as shall be reasonably practicable in view of such mandatory requirements of applicable law.

(d) The Secured Party may proceed to protect and enforce this Security Agreement by suit or suits or proceedings in equity, at law or in bankruptcy, and whether for the specific performance of any covenant or agreement herein contained or in execution or aid of any power herein granted, or for foreclosure hereunder, or for the appointment of a receiver or receivers for the Collateral or any part thereof, for the recovery of judgment for the Indebtedness Hereby Secured or for the enforcement of any other property, legal or equitable remedy available under applicable law.

**5.2. Effect of Sale.** Any sale, whether under any power of sale hereby given or by virtue of judicial proceedings, shall operate to divest all right, title, interest, claim and demand whatsoever, either at law or in equity, of the Debtor in and to the property sold and shall be a perpetual bar, both at law and in equity, against the Debtor, its successors and assigns, and against any and all Persons claiming the property sold, or any part thereof under, by or through the Debtor, its successors or assigns.

**5.3. Application of Sale Proceeds.** The proceeds and/or avails of any sale of the Collateral, or any part thereof, and the proceeds and the avails of any remedy hereunder shall be paid to and applied as follows:

(a) First, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all property expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by the Secured Party, and of all taxes, assessments or liens superior to the lien of these presents, except any taxes, assessments or other superior lien subject to which said sale may have been made;

(b) Second, to the payment of costs and expenses of foreclosure or suit, if any, and of such sale, and of all property expenses, liability and advances, including legal expenses and reasonable attorneys' fees, incurred or made hereunder by any of the Lenders;

(c) Third, to the payment of the amount then owing or unpaid on the Notes for principal and interest and any other amounts then owing under any of the Loan Documents in respect of the Notes; and in case such proceeds shall be insufficient to pay in full the whole amount so due, owing or unpaid upon the Notes, then to the holders of the Notes ratably in proportion to the principal amount of the Notes then outstanding, with application on each Note to be made first to unpaid interest thereon, and second, to unpaid principal thereof; and

(d) Fourth, to the payment of the surplus, if any, to the Debtor, its successors and assigns, or to whosoever may be lawfully entitled to receive the same, it being understood that the Debtor shall remain liable to the Secured Party and the Lenders to the extent of any deficiency between the amount of the proceeds of such disposition and the aggregate amount of the sums referred to in clauses (a), (b) and (c) of this Section 5.3.

**5.4. Discontinuance of Remedies.** In case the Secured Party shall have proceeded to enforce any right under this Security Agreement by foreclosure, sale, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely, then, and in every such case, the Debtor and Secured Party shall be restored to their former positions and rights hereunder with respect to the property subject to the security interest created under this Security Agreement.

**5.5. Cumulative Remedies.** No delay or omission of the Secured Party to exercise any right or power arising from any default on the part of the Debtor, shall exhaust or impair any such right or power or prevent its exercise during the continuance of such default. No waiver by the Secured Party of any such default, whether such waiver be

full or partial, shall extend to or be taken to affect any subsequent default, or to impair the rights resulting therefrom except as may be otherwise provided herein. The Secured Party may exercise any one or more or all of the remedies hereunder and no remedy is intended to be exclusive of any other remedy but each and every remedy shall be cumulative and in addition to any and every other remedy given hereunder or otherwise existing now or hereafter at law or in equity; nor shall the giving, taking or enforcement of any other or additional security, collateral or guaranty for the payment of the indebtedness secured under this Security Agreement operate to prejudice, waive or affect the security of this Security Agreement or any rights, powers or remedies hereunder, nor shall the Secured Party be required to first look to, enforce or exhaust such other or additional security, collateral or guaranties.

**5.6. Indemnity.** The Debtor agrees to indemnify, protect and hold harmless the Secured Party, the Agent, the Lenders and each other from time to time holder of the Notes and the officers, directors, employees, agents and affiliates of the Secured Party, the Agent, the Lenders and such other holders (collectively called the "Indemnitees") from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof (except arising from the wilful misconduct or gross negligence of any such Indemnatee), and expenses in connection therewith, including, but not limited to, reasonable counsel fees and expenses, penalties and interest, arising out of or as the result of the entering into or the performance of this Security Agreement, the retention by the Secured Party of a security interest in the Collateral, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or repossession of any of the Equipment, any accident, in connection with the operation, use, condition, possession, storage or repossession of any of the Collateral resulting in damage to property or injury or death to any person during the period while a security interest therein remains in the Secured Party or during the period of the transfer of such security interest in the Collateral by the Secured Party pursuant to any of the provisions of this Security Agreement and all fees, taxes, levies, assessments, charges or withholdings of any nature imposed against any Indemnatee by any federal, state or local government or taxing authority directly relating to the Equipment, any such Indemnatee's interest therein, or any Assigned Lease or use of the Equipment except taxes measured by the income, receipts, capital, purchases, profits or conduct of the business of any Indemnatee (other than taxes which are in the nature of sales or use taxes, base taxes or property taxes). This covenant of indemnity shall continue in full force and effect notwithstanding the full payment and discharge in full of the Indebtedness Hereby Secured and the release of the security interest in the Collateral, as provided in Section 7.4 hereof, or the termination of this Security Agreement in any manner whatsoever.

## **SECTION 6. THE SECURED PARTY.**

The Secured Party accepts the trusts hereunder and agrees to perform the same, but only upon the terms and conditions hereof, including the following, to all of which the Debtor and the respective holders of the Notes at any time outstanding by their acceptance thereof agree:

**6.1. Certain Duties and Responsibilities of Secured Party.** (a) Except during the continuance of an Event of Default:

(i) the Secured Party undertakes to perform such duties and only such duties as are specifically set forth in this Security Agreement, and no

implied covenants or obligations shall be read into this Security Agreement against the Secured Party; and

(ii) in the absence of bad faith or gross negligence on its part, the Secured Party may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Secured Party and conforming to the requirements of this Security Agreement; but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Secured Party, the Secured Party shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Security Agreement.

(b) In case an Event of Default has occurred and is continuing, the Secured Party shall exercise such of the rights and powers vested in it by this Security Agreement for the benefit of the holders of the Notes, and use the same degree of care and skill in their exercise, as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Security Agreement shall be construed to relieve the Secured Party from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) the Secured Party shall not be liable for any error in judgment made in good faith by an officer of the Secured Party unless it shall be proved that the Secured Party was negligent in ascertaining the pertinent facts; and

(ii) the Secured Party shall not be liable to the holder of any Note with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Required Lenders relating to the time, method and place of conducting any proceeding for any remedy available to the Secured Party, or exercising any trust or power conferred upon the Secured Party under this Security Agreement.

(d) No provision of this Security Agreement shall require the Secured Party to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.

(e) Whether or not therein expressly so provided, every provision of this Security Agreement relating to the conduct or affecting the liability of or affording protection to the Secured Party shall be subject to the provisions of this Section.

**6.2. Certain Limitations on Secured Party's Rights to Compensation and Indemnification.** The Secured Party agrees that it shall have no right against the holders of any Note for the payment of compensation for its services hereunder or any expenses or disbursements incurred in connection with the exercise and performance of its powers and duties hereunder or any indemnification against liability which it may incur in the exercise and performance of such powers and duties but, on the contrary, shall look solely to the Debtor under Section 7.05 of the Loan Agreement for such payment and indemnification and that it shall have no lien on nor security interest in the Collateral as security for such



compensation, expenses, reasonable counsel fees, if any, disbursements and indemnification except to the extent provided for in Section 5.3(a) hereof.

**6.3. Certain Rights of Secured Party.** (a) The Secured Party shall not be responsible for any recitals herein or in the Loan Agreement or for insuring the Equipment, or for paying or discharging any tax, assessment, governmental charge or lien affecting the Collateral, or for the recording, filing or refiling of this Security Agreement, or of any Supplemental Security Agreement, nor shall the Secured Party be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements contained herein or in the Loan Agreement, and, except in the case of a default in the payment of the principal of or interest on any Note or a default of which the Secured Party has actual knowledge, the Secured Party shall be deemed to have knowledge of any default in the performance or observance of any such covenants, conditions or agreements only upon receipt of written notice thereof from the Agent or one or more of the holders of the Notes. The Secured Party shall promptly notify the Debtor and the Agent of any default of which the Secured Party has actual knowledge. Upon receipt by the Secured Party of such written notice from the Agent or any holder of a Note, the Secured Party shall promptly notify the Debtor, the Agent and all holders of the Notes of such notice and the default referred to therein by prepaid overnight air courier addressed to them at their addresses specified in Section 7.02 of the Loan Agreement.

(b) The Secured Party makes no representation or warranty as to the validity, sufficiency or enforceability of this Security Agreement, the Notes, the Loan Agreement or any instrument included in the Collateral, or as to the value, title, condition, fitness for use of, or otherwise with respect to, any Equipment or Item of Equipment or any substitute therefor. The Secured Party shall not be accountable to anyone for the use or application of any of the Notes or the proceeds thereof or for the use or application of any property or the proceeds thereof which shall be released from the Lien and security interest hereof in accordance with the provisions of this Security Agreement.

(c) The Secured Party may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties.

(d) Any request, direction or authorization by the Debtor shall be sufficiently evidenced by a request, direction or authorization in writing, delivered to the Secured Party, and signed in the name of the Debtor by its Chairman of the Board, President, any Vice President, Treasurer or Secretary, and any resolution of the Board of Directors of the Debtor shall be sufficiently evidenced by a copy of such resolution certified by its Secretary or Assistant Secretary to have been duly adopted and to be in full force and effect on the date of such certification, and delivered to the Secured Party.

(e) Whenever in the administration of the trust herein provided for, the Secured Party shall deem it necessary or desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by a certificate purporting to be signed by the Chairman of the Board, the President, any Vice President, the Treasurer or the Secretary of the Debtor and delivered to the Secured Party, and such certificate shall fully warrant

to the Secured Party or any other Person for any action taken, suffered or omitted on the faith thereof, but in its discretion the Secured Party may accept, in lieu thereof, other evidence of such fact or matter or may require such further or additional evidence as it may deem reasonable.

(f) The Secured Party may, with the consent of the Debtor if no Default or Event of Default shall have occurred and be continuing and without the consent of the Debtor if a Default or Event of Default shall have occurred and be continuing, consult with counsel, appraisers, engineers, accountants and other skilled Persons to be selected by the Secured Party, and the written advice of any thereof shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon.

(g) The Secured Party shall be under no obligation to take any action to protect, preserve or enforce any rights or interests in the Collateral or to take any action towards the execution or enforcement of the trusts hereunder or otherwise hereunder, whether on its own motion or on the request of any other person, which in the opinion of the Secured Party may involve loss, liability or expense, unless the Debtor or one or more holders of the Notes outstanding shall offer and furnish reasonable security or indemnity against loss, liability and expense to the Secured Party.

(h) The Secured Party shall not be liable to the holder of any Note for any action taken or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Security Agreement.

(i) The Secured Party shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, note or other paper or document, unless requested in writing to do so by the holders of not less than a majority in principal amount of the Notes then outstanding and upon satisfaction of the terms and provisions of Section 6.03(g) as and to the extent applicable.

(j) The Secured Party may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents or attorneys and the Secured Party shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it with due care.

**6.4. Showings Deemed Necessary by Secured Party.** Notwithstanding anything elsewhere in this Security Agreement contained, the Secured Party shall have the right, but shall not be required, to demand in respect of withdrawal of any cash, the release of any property, the subjection of any after-acquired property to the Lien of this Security Agreement, or any other action whatsoever within the purview hereof, any showings, certificates, opinions, appraisals or other information by the Secured Party deemed necessary or appropriate in addition to the matters by the terms hereof required as a condition precedent to such action.

**6.5. Status of Moneys Received.** All moneys received by the Secured Party shall, until used or applied as herein provided, be segregated and held in trust for the purposes for which they were received. Any such moneys held by the Secured Party pursuant to Section 4.2 of this Security Agreement shall be invested at the direction of the Debtor as provided in said Section 4.2 and any other moneys so held by the Secured Party shall be invested at the direction of the Required Lenders and promptly disbursed in

accordance with the terms and provisions of this Security Agreement as and when provided for herein. The Secured Party and any affiliated corporation may become the owner of any Note secured hereby and be interested in any financial transaction with the Debtor or any affiliated corporation or the Secured Party may act as depositary or otherwise in respect to other securities of the Debtor or any affiliated corporation, all with the same rights which it would have if not the Secured Party. The Secured Party agrees that, whenever it shall be required to disburse moneys to any Lender under the provisions hereof, it shall do so by wire transfer of immediately available funds as provided in Schedule I to the Loan Agreement.

**6.6. Resignation of Secured Party.** The Secured Party may resign and be discharged of the trusts hereby created by mailing notice specifying the date when such resignation shall take effect to the Debtor and to the Lenders at their addresses specified in Section 7.02 of the Loan Agreement. Such resignation shall take effect on the date specified in such notice (being not less than sixty days after the mailing of such notice) unless previously a successor secured party shall have been appointed as hereinafter provided, in which event such resignation shall take effect immediately upon the appointment of such successor.

**6.7. Removal of Secured Party.** The Secured Party may be removed and/or a successor secured party may be appointed at any time by an instrument or concurrent instruments in writing signed and acknowledged by the Required Lenders and delivered to the Secured Party and to the Debtor and, in the case of the appointment of a successor secured party, to such successor secured party.

**6.8. Successor Secured Party.** Each secured party appointed in succession of the Secured Party named in this Security Agreement, or its successor in the trust, shall be a trust company or banking corporation having an office in any state of the United States, in good standing and having a capital and surplus aggregating at least \$50,000,000, if there be such a trust company or banking corporation qualified, able and willing to accept the trust upon reasonable or customary terms.

**6.9. Appointment of Successor Secured Party.** If the Secured Party shall have given notice of resignation to the Debtor and the holders of the Notes pursuant to Section 6.6 hereof or if notice of removal shall have been given to the Secured Party and the Debtor and the holders of the Notes pursuant to Section 6.7 hereof, and any such notice does not appoint a successor secured party, a successor secured party may be appointed by the Debtor, or, if such successor secured party shall not have been so appointed or shall not have accepted such appointment within fifteen calendar days after the giving of such notice of resignation or the giving of any such notice of removal, as the case may be, a successor secured party may be appointed by the holder of any outstanding Note or, upon application of the retiring secured party, by any court of competent jurisdiction.

**6.10. Merger or Consolidation of Secured Party.** Any company into which the Secured Party, or any successor to it in the trust created by this Security Agreement, may be merged or converted or with which it or any successor to it may be consolidated or any company resulting from any merger or consolidation to which the Secured Party or any successor to it shall be a party (provided such company shall be a corporation organized under the laws of the United States of America or of a state thereof, having a capital and surplus of at least \$50,000,000), shall be the successor to the Secured Party under this Security Agreement without the execution or filing of any paper or any further act on the

part of any of the parties hereto. The Debtor covenants that in case of any such merger, consolidation or conversion it will, upon the request of the merged, consolidated or converted corporation, execute, acknowledge and cause to be recorded or filed suitable instruments in writing to confirm the estates, rights and interests of such corporation as secured party under this Security Agreement.

**6.11. Conveyance Upon Request of Successor Secured Party.** Should any deed, conveyance or instrument in writing from the Debtor be required by any successor secured party for more fully and certainly vesting in and confirming to such new secured party such estates, rights, powers and duties, then upon request any and all such deeds, conveyances and instruments in writing shall be made, executed, acknowledged and delivered, and shall be caused to be recorded and/or filed, by the Debtor.

**6.12. Acceptance of Appointment by Successor Secured Party.** Any new secured party appointed pursuant to any of the provisions hereof shall execute, acknowledge and deliver to the Debtor an instrument accepting such appointment, and thereupon such new secured party, without any further act, deed or conveyance, shall become vested with all the estates, properties, rights, powers and trusts of its predecessor in the rights hereunder with like effect as if originally named as secured party herein; but nevertheless, upon the written request of the Debtor or of the successor secured party, the secured party ceasing to act shall execute and deliver an instrument transferring to such successor secured party, upon the trusts herein expressed, all the estates, properties, rights, powers and trusts of the secured party so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such secured party to the successor secured party so appointed in its or his place.

## **SECTION 7. MISCELLANEOUS.**

**7.1. Successors and Assigns.** Whenever any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all the covenants, promises and agreements in this Security Agreement contained by or on behalf of the Debtor or by or on behalf of the Secured Party, shall bind and inure to the benefit of the respective successors and assigns of such parties whether so expressed or not.

**7.2. Partial Invalidity.** The unenforceability or invalidity of any provision or provisions of this Security Agreement shall not render any other provision or provisions herein contained unenforceable or invalid.

**7.3. Communications.** All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when delivered personally or when sent by prepaid overnight air courier, telegraphed, transmitted by facsimile communications, receipt confirmed, addressed as follows:

If to the Debtor --

ACF Industries, Incorporated  
3301 Rider Trail South  
Earth City, MO 63045  
Attention: Treasurer

with a copy to its office at:

100 South Bedford  
Mt. Kisco, New York 10549  
Attention: Treasurer

If to the Secured Party --

Fleet National Bank,  
as Security Trustee under a  
Security Agreement-Trust Deed dated October 12, 1989  
125 Dupont Drive  
Providence, Rhode Island 02907  
Attention: Corporate Trust Department

with a copy to the Agent at its address  
specified in Section 7.02 of the Loan  
Agreement and

with a copy to each Lender at its address  
specified in Schedule I to the Loan Agreement  
or in an Assignment and Acceptance, as the case  
may be.

**7.4. Release.** At the expense of the Debtor, the Secured Party shall release this Security Agreement and the security interest granted hereby by proper instrument or instruments upon presentation of satisfactory evidence that all Indebtedness Hereby Secured has been fully paid or discharged. Without limiting the foregoing, the Secured Party shall execute and deliver a release in respect of Items of Equipment identified in a written direction delivered by the Agent pursuant to Section 1.04(a)(ii) of the Loan Agreement.

**7.5. Governing Law.** This Security Agreement shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and such additional rights, arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Security Agreement or any assignment hereof may be filed, recorded or deposited.

**7.6. Counterparts.** This Security Agreement may be executed, acknowledged and delivered in any number of counterparts, each of such counterparts constituting an original but all together constituting only one Security Agreement.

**7.7. Headings.** Any headings or captions preceding the text of the several sections hereof are intended solely for convenience of reference and shall not constitute a part of this Security Agreement nor shall they affect its meaning, construction or effect.

**7.8. Confidentiality.** The Secured Party, the Agent and each Lender and each other holder of the Notes by its acceptance thereof agrees that any information obtained by such Person pursuant to this Security Agreement will be treated as confidential unless and until such information has been publicly disclosed by the Borrower; provided, however, that nothing herein contained shall limit or impair the right or obligation of the Secured Party, the Agent, any Lender or any other holder of the Notes to disclose such information: (a) to its internal and external auditors, (b) when required by law, (c) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or federal regulatory body having or claiming to have jurisdiction over such holder, (d) to use the same in connection with the enforcement of the terms and conditions of this Security Agreement or any of the other Loan Documents, (e) which is (or after disclosure to any such Person becomes) publicly available or readily ascertainable from public sources, or which is received by the Agent, any Lender or any other holder of the Notes from a third Person who or which is not bound to keep the same confidential, (f) as may be required or appropriate in response to any summons or subpoena or in connection with any litigation (it being understood and agreed that the Agent or such Lender will use its reasonable best efforts to provide the Borrower with timely notice thereof) or (g) to the extent necessary in connection with any contemplated transfer of any of the Notes or any interest in any thereof by any holder thereof (provided that any such prospective transferee or participant shall have entered into a confidentiality agreement similar in scope to that contemplated by this Section 7.8).

## **SECTION 8. DEFINITIONS.**

**8.1.** As used herein, the following terms shall have the meanings herein specified unless the context otherwise requires. Defined terms in this Security Agreement shall include in the singular number the plural and in the plural number the singular.

"AAR" shall mean the Association of American Railroads.

"Agent" shall have the meaning specified in the Loan Agreement.

"Assignment and Acceptance" shall have the meaning specified in the Loan Agreement.

"Assigned Leases" shall have the meanings specified in Section 1.1 hereof.

"Assigned Lease Rights" shall have the meaning specified in Section 1.1 hereof.

"Cash Collateral Account" shall have the meaning specified in Section 4.2 hereof.

"Casualty Loss" shall have the meaning specified in Section 4.2 hereof.

"Casualty Loss Proceeds" shall have the meaning specified in Section 4.2 hereof.

"Casualty Value" shall mean with respect to any Item of Equipment an amount equal to the product of (a) a fraction, the numerator of which is an amount equal

to the Cost of such Item of Equipment for which settlement is then being made and the denominator of which is the aggregate Cost of all Items of Equipment described in the same Security Agreement Supplements multiplied by (b) the unpaid principal amount of the Loan relating to such Item of Equipment and such Security Agreement Supplement immediately prior to the prepayment of such Loan (after giving effect to all payments of principal made or to be made on or prior to the date of prepayment in respect of such Loan).

**"Collateral"** shall have the meaning specified in Section 1 hereof.

**"Cost"** shall mean the "car builder's cost" incurred by the Debtor in the ordinary course of business in connection when the manufacturer of railroad rolling stock, including the direct cost of labor, materials and overhead but excluding overhead of the Debtor attributed to its corporate headquarters and excluding any manufacturers profit.

**"Debtor"** shall mean ACF Industries, Incorporated, a New Jersey corporation, and its successors and assigns.

**"Default"** shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

**"Event of Default"** shall have the meaning specified in Section 5.1 hereof.

**"Equipment"** shall have the meaning specified in Section 1.1 hereof.

**"ICA"** shall have the meaning specified in Section 2.3 hereof.

**"Indebtedness Hereby Secured"** shall have the meaning specified in Recital C hereof.

**"Indemnatee"** shall have the meaning specified in Section 5.6 hereof.

**"Item of Equipment"** shall have the meaning specified in Section 1.1 hereof.

**"Lender"** and **"Lenders"** shall have the respective meanings specified in Recital A hereof.

**"Lien"** shall have the meaning specified in Section 2.3 hereof.

**"Loan"** and **"Loans"** shall have the respective meanings specified in the Loan Agreement.

**"Loan Agreement"** shall have the meaning specified in Recital A hereof.

**"Loan Documents"** shall have the meaning specified in the Loan Agreement.

**"Maturity Date"** shall have the meaning specified in the Loan Agreement.

**"Permitted Lien"** shall have the meaning specified in Section 2.3 hereof.

**"Person"** shall have the meaning specified in the Loan Agreement.

**"Rolling Stock"** shall mean standard gauge freight train cars.

**"Secured Party"** shall mean Fleet National Bank, as Agent, a national banking association and its permitted successors and assigns hereunder.

**"Security Agreement"** shall mean this Security Agreement as specified in the first paragraph hereof and shall include each and every Security Agreement Supplement.

**"Security Agreement Supplement"** and **"Security Agreement Supplements"** shall have the respective meaning specified in Section 1.1(i) hereof.

**"UCC"** shall have the meaning specified in Section 2.3 hereof.



IN WITNESS WHEREOF, the Debtor and the Secured Party have executed this Security Agreement as of this 12th day of October, 1989.

**ACF INDUSTRIES, INCORPORATED**

By: Harish Chohan  
Title: Asst Treasurer

**FLEET NATIONAL BANK,  
as Secured Party**

By: Connie M. Rudnicki  
Title: Trust Officer

STATE OF New York )  
COUNTY OF New York ) ss.:

On this 11<sup>th</sup> day of October, 1989, before me, personally appeared Umesh Choksi <sup>assistant</sup> ~~treasurer~~, to me personally known, who being by me duly sworn, says that (s)he is a treasurer, of ACF Industries, Incorporated and that said instrument was signed on the date hereof on behalf of said corporation by authority of its Board of Directors; and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Sarah C. Kibbe  
Notary Public

(SEAL)

My commission expires:

SARAH C. KIBBE  
Notary Public, State of New York  
No. 24-4844567  
Qualified in Kings County  
Commission Expires November 30, 1989

STATE OF RHODE ISLAND )  
COUNTY OF PROVIDENCE ) ss.:

On this 11<sup>th</sup> day of October, 1989, before me, personally appeared Connie M. Rudnicki to me personally known, who being by me duly sworn, says that (s)he is a Trust Officer of Fleet National Bank, and that said instrument was signed on the date hereof on behalf of said bank by authority of its Board of Directors; and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

Martha M. Brune  
Notary Public

(SEAL)

My commission expires:

My Commission Expires June 30, 1991

## SECURITY AGREEMENT SUPPLEMENT

SECURITY AGREEMENT SUPPLEMENT NO. \_\_, dated \_\_\_\_, 19\_\_, between ACF Industries, Incorporated, a New Jersey corporation, (the "Debtor") and Fleet National Bank, a national banking association, as security trustee (the "Secured Party") under the Security Agreement dated as of October 12, 1989, from the Debtor to the Secured Party (the "Security Agreement"),

### W I T N E S S E T H:

WHEREAS, the defined terms used in this Security Agreement Supplement shall have the respective meanings indicated in the Security Agreement unless elsewhere defined or the context shall otherwise require.

WHEREAS, the Security Agreement provides for the execution and delivery from time to time of Security Agreement Supplements substantially in the form hereof each of which shall particularly describe Items of Equipment included in the Collateral and subject to the security interest of the Security Agreement;

NOW, THEREFORE, TO SECURE THE PAYMENT when and as due and payable of the principal of and interest on the Notes, and to secure the payment of all other indebtedness which the Security Agreement by its terms secures and compliance with all the terms of the Loan Documents, the Debtor does hereby create and grant to the Secured Party and to its successors and assigns a security interest in the following properties:

(a) all the Items of Equipment described in Schedule A annexed hereto;

(b) all additional or substituted Items of Equipment which hereafter may be subjected to the security interest of the Security Agreement by operation thereof;

(c) all Assigned Leases from time to time relating to but only to the extent relating to such Items of Equipment; and

(d) all rents, income, revenues, issues, profits and proceeds arising from or in connection with any of the Items of Equipment and the Assigned Leases but only to the extent relating to the Equipment.

THE DEBTOR hereby binds itself, its successors and assigns, to warrant and forever defend to the Secured Party and its successors in trust and assigns the security interest hereby created and granted.

This Supplement shall be construed as supplemental to the Security Agreement and shall form a part of it and the Security Agreement is hereby incorporated by reference herein and is hereby ratified, approved and confirmed.

This Supplement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

EXHIBIT A  
(to Security Agreement)

This Supplement shall be construed in accordance with and governed by the laws of the State of New York; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. Section 11303 and such additional rights, arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of several jurisdictions in which this Supplement or any assignment hereof may be filed, recorded or deposited.

IN WITNESS WHEREOF, the Debtor and the Secured Party have caused this Supplement to be executed, as of this \_\_\_\_\_ day of \_\_\_\_\_, 198\_.

**ACF INDUSTRIES, INCORPORATED**

By \_\_\_\_\_  
Its \_\_\_\_\_

**FLEET NATIONAL BANK,**  
as Secured Party

By \_\_\_\_\_  
Its Vice President

STATE OF \_\_\_\_\_ )  
: ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 198\_\_, before me, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that (s)he is a \_\_\_\_\_ of ACF Industries, Incorporated and that said instrument was signed on the date hereof on behalf of said corporation by authority of its Board of Directors; and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

STATE OF RHODE ISLAND )  
: ss.:  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 198\_\_ before me, personally appeared \_\_\_\_\_ to me personally known, who being by me duly sworn, says that (s)he is a \_\_\_\_\_ of \_\_\_\_\_ and that said instrument was signed on the date hereof on behalf of said bank by authority of its Board of Directors; and (s)he acknowledged that the execution of the foregoing instrument was the free act and deed of said bank.

\_\_\_\_\_  
Notary Public

(SEAL)

My commission expires:

**DESCRIPTION OF EQUIPMENT**

**SCHEDULE A**  
**(to Security Agreement Supplement)**